

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**IN RE: GENERIC PHARMACEUTICALS  
PRICING ANTITRUST LITIGATION**

**MDL 2724  
16-MD-2724  
HON. CYNTHIA M. RUFÉ**

**THIS DOCUMENT RELATES TO:**

***ALL ACTIONS***

**DEFENDANTS' JOINT SUPPLEMENTAL MEMORANDUM OF LAW  
REGARDING LIFEWATCH SERVICES, INC. V. HIGHMARK INC.**

**I. INTRODUCTION**

Pursuant to this Court's order, the undersigned Defendants submit this supplemental memorandum of law explaining why the Third Circuit's recent decision in *LifeWatch Services Inc. v. Highmark Inc.*, No. 17-1990, 2018 U.S. App. LEXIS 24318 (3d Cir. Aug. 28, 2018) supports dismissal of the Group 1 drug Complaints of the Direct Purchaser Plaintiffs, End-Payer Plaintiffs, and Indirect Reseller Plaintiffs (collectively, "Private Plaintiffs").<sup>1</sup> The plaintiff's allegations in *LifeWatch*, that the defendants uniformly adopted and later enforced a defined allegedly anticompetitive policy, stand in stark contrast to the threadbare conspiracy allegations here. Indeed, each of Private Plaintiffs' Complaints fails to meet the standard that *LifeWatch* applied.

---

<sup>1</sup> The Group 1 case management groups are Digoxin, Pravastatin, Clobetasol, Divalproex ER, Doxycycline, and Econazole. See 16-DG-27241 ECF Doc. No. 81; 16-DG-27242 ECF Doc. No. 139; 16-DG-27243 ECF Doc. No. 48; 16-PV-27241 ECF Doc. No. 70; 16-PV-27242 ECF Doc. No. 114; 16-PV-27243 ECF Doc. No. 33; 16-CB-27241 ECF Doc. No. 77; 16-CB-27242 ECF Doc. No. 129; 16-CB-27243 ECF Doc. No. 39; 16-DV-27241 ECF Doc. No. 79; 16-DV-27242 ECF Doc. No. 102; 16-DV-27243 ECF Doc. No. 24; 16-DX-27241 ECF Doc. No. 92; 16-DX-27242 ECF Doc. No. 162; 16-DX-27243 ECF Doc. No. 57; 16-EC-27241 ECF Doc. No. 67; 16-EC-27242 ECF Doc. No. 114; 16-EC-27243 ECF Doc. No. 23. The Court's Order permitted each party to file a supplemental memorandum not to exceed five pages. For efficiency purposes, Defendants submit this joint memorandum in slight excess of the five page limit rather than file several separate memoranda.

The Third Circuit’s decision in *LifeWatch* demonstrates why dismissal is appropriate here because it involved detailed allegations regarding the alleged agreement, near-identical conduct by the conspirators, a clear enforcement mechanism for the conspiracy, specific meetings, and actions against the conspirators’ interests. No such allegations are made here, and the vast differences between the specific conspiratorial activities alleged in *LifeWatch* and the conclusory and unsupported allegations made in Private Plaintiffs’ Complaints shows those Complaints should be dismissed.

The *LifeWatch* opinion, which concerned an alleged non-price restraint, does not change the requirements for pleading a facially plausible claim under Section 1 of the Sherman Act. Consistent with Defendants’ pending motions, the Court’s opinion in *LifeWatch* leaves no doubt that “a claim based on parallel—even consciously parallel—conduct alone [is] insufficient to survive dismissal.” 2018 U.S. App. LEXIS 24318, at \*14. Plaintiffs must allege something “more,” and *LifeWatch* confirms that, in cases concerning concentrated, oligopolistic markets, that means plaintiffs must set forth non-conclusory factual allegations of “non-economic evidence ‘that there was an actual manifest agreement’” among defendants. *Id.* at \*10 (quoting *In re Ins. Brokerage Antitrust Litig.*, 618 F.3d 300, 322 (3d Cir. 2010)). The Third Circuit found that LifeWatch alleged the required “more” through specific allegations of “the type of agreement reached by the Blue Plans and the Association, an auditing mechanism by which the agreement is enforced, a particular time when a Blue Plan declined to cover telemetry monitors due to pressure from the Association and other Plans, and the improbability that the same coverage decision would be reached by nearly all the Blue Plans independently.” *Id.*

But whereas LifeWatch alleged (i) a defined agreement, (ii) an enforcement mechanism, and (iii) actual enforcement, Private Plaintiffs here have alleged nothing more than pricing

conduct that is consistent with independent decision-making in concentrated markets. Labels and conclusory allegations concerning government investigations, innocuous public statements, market conditions, and opportunities to conspire have never been enough to survive a motion to dismiss, before or after *LifeWatch*.

## II. ARGUMENT

In *LifeWatch*, the Third Circuit recognized, consistent with *Twombly*, that lawful, interdependent decision-making is typical and expected in markets with a limited set of competitors.<sup>2</sup> *Id.* “In cases involving concentrated markets like oligopolies . . . where a small number of sellers or buyers of a particular product dominate the market . . . competitors are more likely to be influenced by each other’s behavior even without agreeing to act in concert.” *Id.* In light of these economic realities, the Third Circuit made clear that courts analyzing alleged parallel conduct, such as at issue here, must focus on whether plaintiffs have set forth sufficient allegations of “evidence implying a traditional conspiracy.”<sup>3</sup> *Id.* at \*11.

While the *LifeWatch* complaint contained specific allegations of the type of traditional conspiracy evidence that can raise a suggestion of conspiracy under *Twombly*, the Group 1 drug Complaints do not. For instance, *LifeWatch* alleged an actual agreement, the contours of that alleged agreement, and the method through which the defendants reached that agreement.

Specifically, during several meetings that occurred each year, the defendants allegedly discussed

---

<sup>2</sup> The *LifeWatch* complaint alleged a fundamentally different type of conspiracy than the type of conspiracy alleged in this MDL. Nevertheless, the court’s analysis of what constitutes “more” is instructive because it applied established Third Circuit law to pleadings significantly more robust and specific than those in this MDL, offering a clear contrast between pleadings that satisfy the requirements of *Twombly* and those, like here, that do not.

<sup>3</sup> “Evidence implying a traditional conspiracy” is one of three “plus factors” regularly recognized by Third Circuit courts, along with motive and actions against self-interest. *LifeWatch*, 2018 U.S. App. LEXIS 24318 at \*10. *LifeWatch* and earlier Third Circuit decisions instruct that in cases involving oligopolies, courts are to “de-emphasize” allegations regarding motive and actions against self-interest because they “largely restate [the] phenomenon of interdependence.” *Id.* (quoting *Valspar v. E.I Du Pont De Nemours & Co.*, 873 F.3d 185, 193 (3d Cir. 2017)). Despite this clear guidance, Private Plaintiffs’ briefs opposing Defendants’ motions to dismiss rely heavily on arguments regarding these two plus factors in an attempt to make up for their lack of sufficient allegations of traditional conspiracy evidence. *LifeWatch* is but the latest Third Circuit decision to confirm that those arguments cannot carry the day on a motion to dismiss in an oligopoly case.

and voted on a Model Policy that determined which products should be approved for reimbursement, and then agreed to substantially comply with the Model Policy and adopted its language with “near total uniformity” (the so-called “Uniformity Rule”), resulting in the exclusion of LifeWatch’s products from coverage.

LifeWatch also alleged “an auditing mechanism by which the agreement [was] enforced.” *Id.* at \*14. Insurers that disobeyed the Uniformity Rule allegedly faced sanctions. Indeed, LifeWatch “provide[d] a particular example” of the enforcement mechanism in operation, when one defendant was disciplined for not following the alleged agreement. *Id.* at \*13.

Finally, LifeWatch alleged that other insurers routinely covered telemetry monitors as medically necessary, making it “improbab[le]” that the defendants independently reached identical contrary coverage decisions. *Id.*

Based on this combination of specifically alleged facts, the Third Circuit found that the “agreement and enforcement mechanism pled here provide the ‘reasonably founded hope that the [discovery] process will reveal relevant evidence.’” (quoting *Twombly*, 550 U.S. at 559)). Put another way, the *LifeWatch* complaint contained the “more” necessary to move the claim in that case beyond the plausibility threshold. Private Plaintiffs’ Complaints do not come close to meeting that burden.

*First*, in *LifeWatch*, the plaintiff alleged a written policy that defined the nature and contours of the conspiracy as well as a specific enforcement mechanism. In stark contrast, Private Plaintiffs make only conclusory allegations of agreements and offer no facts – none of the required who, what, where, or when – in support of their allegations that Defendants’ alleged pricing conduct resulted from an agreement (as opposed to natural market forces). In fact, certain of the alleged agreements Private Plaintiffs allege defy logic. In the Doxycycline

Complaints, for instance, the purported agreement involves two different products (Doxycycline Regular Release (“Doxy RR”) and Doxycycline Delayed Release (“Doxy DR”)), different sets of Defendants, different types of alleged anticompetitive conduct, and different timeframes for the alleged wrongdoing. *See* Defs.’ Doxycycline DPP Mem. of Law (ECF Doc. No. 92) at ECF 14.

*Second*, LifeWatch alleged that the insurers uniformly adopted the Model Policy and “use[d] similar or identical language to deny coverage of telemetry monitors.” *LifeWatch*, 2018 U.S. App. LEXIS 24318, at \*11. Private Plaintiffs’ Complaints do not allege any simultaneous or uniform action. On the contrary, in their Digoxin Complaints, Private Plaintiffs concede that three Defendants were not even in the market at the time of the initial price increase and that as they entered, prices fell substantially across Defendants in a non-uniform fashion. Defs.’ Digoxin DPP Mem. of Law (ECF Doc. No. 81-1) at ECF 26-27. In their Pravastatin Complaints, Private Plaintiffs’ own allegations make clear that several months elapsed between the Defendants’ alleged Pravastatin price increases and also that there were substantial differences between Defendants’ respective prices, especially at their supposed peaks. *See* Defs.’ Pravastatin DPP Mem. of Law (ECF Doc. No. 70) at ECF 24-25. Similarly, the Clobetasol Complaints allege stark differences in the purported levels and timing of the price increases (and decreases) and that one Defendant did not even raise its prices until two years after the initial price movement. *See* Defs.’ Clobetasol DPP Mem. of Law (ECF Doc. No. 77-1) at ECF 16-19.

*Third*, the non-uniform conduct pled in the respective Group 1 drug Complaints highlights another key difference from *LifeWatch*: each of Private Plaintiffs’ Complaints lacks any allegation of an enforcement mechanism or a specific example of a noncompliant defendant being disciplined. For example, the Econazole Complaints contain pricing graphs demonstrating that Defendants adopted very different pricing strategies at very different times and often moved

in very different directions. *See* Defs.’ Econazole DPP Mem. of Law (ECF Doc. No. 67-1) at ECF 8-10. There are no allegations, as in *LifeWatch*, that any Defendant was coerced into uniformity. Moreover, Private Plaintiffs do not attempt to allege that Defendants selling Doxy DR engaged in parallel behavior at all; their allegations instead reflect that those Defendants competed against each other for market share and customers with no enforcement mechanism “disciplining” their competition.

*Fourth*, unlike *LifeWatch*, Private Plaintiffs do not allege that Defendants actually met to form any of the alleged agreements. Private Plaintiffs allege only that Defendants had *opportunities* to meet (i) at trade association or social events or (ii) because their offices were in relatively-close proximity to each other. Plaintiffs do not make any accompanying allegations tying these opportunities to any specific agreement concerning any Group 1 drug or even among specific groups of Defendants. Attendance at trade association events, open to all types of industry participants, is entirely lawful conduct, and far removed from the series of specific meetings in *LifeWatch* where the defendants allegedly *met and voted* on the policy that they then uniformly implemented.

*Fifth*, LifeWatch’s allegations regarding medical necessity made unilateral decisions to deny coverage improbable. Conversely, as the Third Circuit has explained repeatedly, it is economically rational, and indeed often expected, that firms in interdependent markets (like the ones alleged here) will independently reach similar pricing decisions. *See, e.g., LifeWatch*, 2018 U.S. App. LEXIS 24318, at \*10; *Valspar*, 873 F.3d at 193. Moreover, in certain Complaints, Private Plaintiffs’ own allegations provide specific reasons, other than unlawful agreements, for the alleged price increases. In the Digoxin Complaints, for example, there were only two generic Digoxin manufacturers in the market at the time of the alleged price increase, and the seller of

brand Digoxin had just significantly increased its price. *See* Defs.’ Digoxin DPP Mem. of Law (ECF Doc. No. 81-1) at ECF 18-32. In the Divalproex Complaints, judicially noticeable facts establish that the leading generic manufacturer had regulatory problems and ultimately ceased producing Divalproex for sale in the U.S., leaving the other leading manufacturers to cover the gap in production. Defs.’ Divalproex Mem. of Law (ECF Doc. No. 79-1) at ECF 12-13. In the Doxycycline Complaints, Private Plaintiffs acknowledge that Doxy RR shortages preceded and persisted during the period of the allegedly parallel price increases, reported by the FDA and Center for Disease Control to be caused by both increased demand and manufacturing issues. *See, e.g.*, Defs.’ Doxycycline DPP Mem. of Law at pp. 22-23. These market events provide obvious alternative explanations for Defendants’ allegedly parallel conduct, in sharp contrast to the clinical necessity facts that LifeWatch specifically pled rendering the insurers’ independent decision-making improbable.

In short, here Private Plaintiffs fail to allege something more than entirely lawful, parallel conduct in concentrated markets. As the Third Circuit has recognized, *Twombly* requires dismissal of a conspiracy claim where, *as here*, “‘*common economic experience*,’ or the *facts alleged in the complaint itself*, show that independent self-interest is an ‘*obvious alternative explanation*’ for defendants’ common behavior.” *In re Ins. Brokerage Antitrust Litig.*, 618 F.3d 300, 326 (3d Cir. 2010) (emphasis added). *LifeWatch* merely confirms this well-established law and, thus, lends additional support to Defendants’ motions to dismiss.

### III. CONCLUSION

It is undisputed that under Third Circuit law, as affirmed in *LifeWatch*, a complaint must contain specific factual allegations of agreement to survive a motion to dismiss. As explained above, Private Plaintiffs’ Complaints are devoid of the specific allegations that *LifeWatch* makes

clear must be pled to survive a motion to dismiss. Accordingly, Defendants renew their request that this Court dismiss Private Plaintiffs' Group 1 Complaints with prejudice.

Respectfully submitted,

/s/ Sheron Korpus

Sheron Korpus  
Seth A. Moskowitz  
KASOWITZ BENSON TORRES LLP  
1633 Broadway  
New York, NY 10019  
Tel: (212) 506-1700  
Fax: (212) 506-1800  
skorpus@kasowitz.com  
smoskowitz@kasowitz.com

*Counsel for Defendants Actavis Elizabeth, LLC, Actavis Pharma, Inc., and Actavis Holdco U.S., Inc.*

/s/ J. Gordon Cooney, Jr.

J. Gordon Cooney, Jr.  
John J. Pease, III  
Alison Tanchyk  
William T. McEnroe  
MORGAN, LEWIS & BOCKIUS LLP  
1701 Market Street  
Philadelphia, PA 19103  
Tel: (215) 963-5000  
Fax: (215) 963-5001  
jgcooney@morganlewis.com  
john.pease@morganlewis.com  
alison.tanchyk@morganlewis.com  
william.mcenroe@morganlewis.com

Amanda B. Robinson  
MORGAN, LEWIS & BOCKIUS LLP  
1111 Pennsylvania Avenue, NW  
Washington, D.C. 20004  
Tel: (202) 739-3000  
Fax: (202) 739-3001  
Amanda.robinson@morganlewis.com

Jan P. Levine  
Robin P. Sumner

/s/ Anthony C. Porcelli

Anthony C. Porcelli  
POL SINELLI PC  
150 N. Riverside Plaza, Suite 3000  
Chicago, IL 60606  
(312) 819-1900  
(312) 819-1910 (fax)  
aporcelli@polsinelli.com

Amy D. Fitts  
POL SINELLI PC  
900 W. 48th Place, Suite 900  
Kansas City, MO 64112  
(816) 753-1000  
(816) 222-0425 (fax)  
afitts@polsinelli.com

*Counsel for Defendants Akorn, Inc. Akorn Sales, Inc., and Hi-Tech Pharmacal Co., Inc.*

/s/ Roger Kaplan

Roger Kaplan  
GREENBERG TRAUIG, LLP  
500 Campus Drive, Suite 400  
Florham Park, NJ 07932  
Tel: (973) 360-7900  
Fax: (973) 295-1257  
kaplanr@gtlaw.com

Brian T. Feeney  
GREENBERG TRAUIG, LLP  
2700 Two Commerce Square  
2001 Market Street, Philadelphia, PA 19103  
Tel: (215) 988-7812  
Fax: (215) 717-5265  
feeneyb@gtlaw.com

*Counsel for Defendant Dr. Reddy's Laboratories, Inc.*



Michael J. Hartman  
PEPPER HAMILTON LLP  
3000 Two Logan Square  
Eighteenth & Arch Streets  
Philadelphia, PA 19103-2799  
Tel: (215) 981-4000  
Fax: (215) 981-4750  
levinej@pepperlaw.com  
sumnerr@pepperlaw.com  
hartmanm@pepperlaw.com

*Counsel for Defendant Teva Pharmaceuticals  
USA, Inc.*

*/s/ James W. Matthews*

---

James W. Matthews  
Katy E. Koski  
John F. Nagle  
FOLEY & LARDNER LLP  
111 Huntington Avenue  
Boston, MA 02199  
Tel: (617) 342-4000  
Fax: (617) 342-4001  
jmatthews@foley.com  
kkoski@foley.com  
jnagle@foley.com

James T. McKeown  
Elizabeth A. N. Haas  
Kate E. Gehl  
FOLEY & LARDNER LLP  
777 East Wisconsin Avenue  
Milwaukee, WI 53202-5306  
Tel: (414) 271-2400  
Fax: (414) 297-4900  
jmckeown@foley.com  
ehaas@foley.com  
kgehl@foley.com

Terry M. Henry  
Melanie S. Carter  
BLANK ROME LLP  
One Logan Square  
130 North 18th Street  
Philadelphia, PA 19103  
Tel: (215) 569-5644

*/s/ Steven A. Reed*

---

Steven A. Reed  
R. Brendan Fee  
MORGAN, LEWIS & BOCKIUS LLP  
1701 Market Street  
Philadelphia, PA 19103  
Tel: (215) 963-5603  
Fax: (215) 963-5001  
steven.reed@morganlewis.com  
brendan.fee@morganlewis.com

Andrew S. Wellin  
MORGAN, LEWIS & BOCKIUS LLP  
101 Park Avenue  
New York, NY 10178  
Tel: (212) 309-6154  
Fax: (212) 309-6001  
andrew.wellin@morganlewis.com

*Counsel for Defendant Glenmark  
Pharmaceuticals Inc., USA*

*/s/ Gerald E. Arth*

---

Gerald E. Arth  
Ryan T. Becker  
FOX ROTHSCHILD LLP  
2000 Market Street  
Philadelphia, PA 19103  
Tel: (215) 299-2720  
Fax: (215) 299-2150  
garth@foxrothschild.com  
rbecker@foxrothschild.com

George G. Gordon  
Stephen D. Brown  
Julia Chapman  
DECHERT LLP  
2929 Arch Street  
Philadelphia, PA 19104  
Tel. 215-994-2000  
george.gordon@dechert.com  
stephen.brown@dechert.com  
julia.chapman@dechert.com

*Counsel for Defendant Lannett Company, Inc.*

Fax: (215) 832-5644  
THenry@blankrome.com  
MCarter@blankrome.com

*Counsel for Defendant Apotex Corp.*

/s/ D. Jarrett Arp

D. Jarrett Arp  
Daniel W. Nelson  
Melanie L. Katsur  
Christopher B. Leach  
GIBSON, DUNN & CRUTCHER LLP  
1050 Connecticut Ave., NW  
Washington, DC 20036-5306  
Tel: (202) 955-8678  
Fax: (202) 530-9527  
jarp@gibsondunn.com  
dnelson@gibsondunn.com  
mkatsur@gibsondunn.com  
cleach@gibsondunn.com

*Counsel for Defendant Heritage  
Pharmaceuticals Inc.*

/s/ Saul P. Morgenstern

Saul P. Morgenstern  
Margaret A. Rogers  
Kathryn L. Rosenberg  
ARNOLD & PORTER KAYE SCHOLER  
LLP  
250 West 55th Street  
New York, NY 10019  
Tel: (212) 836-8000  
saul.morgenstern@arnoldporter.com  
margaret.rogers@arnoldporter.com  
kathryn.rosenberg@arnoldporter.com

Laura S. Shores  
ARNOLD & PORTER KAYE SCHOLER  
LLP  
601 Massachusetts Avenue, NW Washington,  
DC 20001  
Tel: (202) 942-5000  
Fax: (202) 942-5999  
laura.shores@arnoldporter.com

/s/ Leiv Blad

Leiv H. Blad  
Zarema A. Jaramillo  
Katie R. Glynn  
LOWENSTEIN SANDLER LLP  
2200 Pennsylvania Avenue, NW  
Washington, DC 20037  
Tel: (202) 753-3800  
Fax: (202) 753-3838  
lblad@lowenstein.com  
zjaramillo@lowenstein.com  
kglynn@lowenstein.com

*Counsel for Defendant Lupin  
Pharmaceuticals, Inc.*

/s/ Chul Pak

Chul Pak  
Jeffrey C. Bank  
WILSON SONSINI GOODRICH &  
ROSATI, PC  
1301 Avenue of the Americas  
40th Floor  
New York, New York 10019  
Tel: (212) 497-7726  
Fax: (212) 999-5899  
cpak@wsgr.com  
jbank@wsgr.com

Seth C. Silber  
WILSON SONSINI GOODRICH &  
ROSATI, PC  
1700 K Street, NW  
Fifth Floor  
Washington, DC 20006  
Tel: (202) 973-8824  
Fax: (202) 973-8899  
ssilber@wsgr.com

*Counsel for Defendant Mylan Inc. and Mylan  
Pharmaceuticals Inc.*

/s/ John E. Schmidlein

John E. Schmidlein (admitted pro hac vice)  
Sarah F. Teich (admitted pro hac vice)

*Counsel for Defendants Sandoz Inc. and  
Fougera Pharmaceuticals Inc.*

/s/ Michael Martinez

Michael Martinez  
Steven Kowal  
Lauren Norris Donahue  
Brian J. Smith  
K&L GATES LLP  
70 W. Madison St., Suite 3100  
Chicago, IL 60602  
Tel: (312) 372-1121  
Fax: (312) 827-8000  
michael.martinez@klgates.com  
steven.kowal@klgates.com  
lauren.donahue@klgates.com  
brian.j.smith@klgates.com

*Counsel for Defendant Mayne Pharma Inc.*

/s/ Scott A. Stempel

Scott A. Stempel  
J. Clayton Everett, Jr.  
Tracey F. Milich  
MORGAN, LEWIS & BOCKIUS LLP  
1111 Pennsylvania Avenue, NW  
Washington, D.C. 20004  
Phone: (202) 739-3000  
Fax: (202) 739-3001  
scott.stempel@morganlewis.com  
clay.everett@morganlewis.com  
tracey.milich@morganlewis.com

Harvey Bartle IV  
Francis A. DeSimone  
MORGAN, LEWIS & BOCKIUS LLP  
1701 Market Street  
Philadelphia, PA 19103  
Phone: (215) 963-5000  
Fax: (215) 963-5001  
harvey.bartle@morganlewis.com  
frank.desimone@morganlewis.com

*Counsel for Defendant Perrigo New York, Inc.*

WILLIAMS & CONNOLLY LLP  
725 Twelfth Street, N.W.  
Washington, D.C. 20005  
Tel: (202) 434-5000  
Fax: (202) 434-5029  
jschmidtlein@wc.com  
steich@wc.com

*Counsel for Defendant Par Pharmaceutical,  
Inc.*

/s/ Heather K. McDevitt

Heather K. McDevitt  
Bryan D. Gant  
WHITE & CASE LLP  
1221 Avenue of the Americas  
New York, New York 10020  
Tel: (212) 819-8200  
Fax: (212) 354-8113  
hmcdevitt@whitecase.com  
bgant@whitecase.com

*Counsel for Defendant Teligent, Inc.*

/s/ William A. Escobar

William A. Escobar  
Damon W. Suden  
KELLEY DRYE & WARREN LLP  
101 Park Avenue  
New York, New York 10178  
Tel: (212) 808-7800  
Fax: (212) 808-7897  
wescobar@kelleydrye.com  
dsuden@kelleydrye.com

*Counsel for Defendants Wockhardt USA LLC  
and Morton Grove Pharmaceuticals Inc.*

/s/ Jan P. Levine

Jan P. Levine  
Robin P. Sumner  
Michael J. Hartman  
Eric S. Merin  
PEPPER HAMILTON LLP  
3000 Two Logan Square  
Eighteenth & Arch Streets

*/s/ Douglas Baldridge*

---

J. Douglas Baldridge  
Lisa Jose Fales  
Danielle R. Foley  
VENABLE LLP  
600 Massachusetts Avenue, NW  
Washington, D.C. 20001  
(202) 344-4000  
jbaldridge@venable.com  
ljfales@venable.com  
drfoley@venable.com

Thomas J. Welling, Jr.  
Benjamin P. Argyle  
VENABLE LLP  
1270 Avenue of the Americas  
24th Floor  
New York, New York 10020  
(212) 307-5500  
tjwelling@venable.com  
bpargyle@venable.com

*Counsel for Defendants Mutual  
Pharmaceutical Company, Inc., Sun  
Pharmaceutical Industries, Inc. and Taro  
Pharmaceuticals U.S.A., Inc.*

Philadelphia, PA 19103-2799  
Tel: (215) 981-4000  
Fax: (215) 981-4750  
levinej@pepperlaw.com  
sumnerr@pepperlaw.com  
hartmanm@pepperlaw.com  
merine@pepperlaw.com

Keith J. Harrison  
Shari Ross Lahlou  
Astor H.L. Heaven  
CROWELL & MORING LLP  
1001 Pennsylvania Avenue, NW  
Washington, D.C. 20004-2595  
Tel. (202) 624-2500  
Fax. (202) 624-5116  
kharrison@crowell.com  
slahlou@crowell.com  
aheaven@crowell.com

*Counsel for Defendant West-Ward  
Pharmaceuticals Corp.*

*/s/ Jason R. Parish*

---

Jason R. Parish  
Bradley J. Kitlowski  
Andrew Hope  
BUCHANAN INGERSOLL & ROONEY PC  
1700 K Street, N.W.  
Washington, DC 20006  
Tel: (202) 452-7940  
jason.parish@bipc.com  
andrew.hope@bipc.com

*Counsel for Defendant Zydus  
Pharmaceuticals (USA), Inc.*

**CERTIFICATE OF SERVICE**

I hereby certify that on September 14, 2018 a true and correct copy of the foregoing DEFENDANTS' JOINT SUPPLEMENTAL MEMORANDUM OF LAW REGARDING *LIFEWATCH SERVICES, INC. V. HIGHMARK INC.* was served via ECF upon all counsel of record.

/s/ Jan P. Levine

Jan P. Levine